



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 14, 1996

Mr. Dale W. Lee  
Regional Attorney  
Texas Department of Protective  
and Regulatory Services  
P.O. Box 3700  
Amarillo, Texas 79116-3700

OR96-1457

Dear Mr. Lee:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100665.

The Texas Department of Protective and Regulatory Services (the "department") received an open records request for all records concerning a certain child. You contend that the department may withhold the requested records from the public pursuant to sections 552.101, 552.103 and 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law. Section 261.201(a) of the Family Code reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or

developed in an investigation under this chapter or in providing services as a result of an investigation.

The requested information here consists of "reports, records, communications, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. We believe subsection (a) is applicable to the requested information. However, the department's release of the information pursuant to subsection (a) may be governed under rules adopted by the investigating agency. We will consider whether the department's rules provide for the disclosure of the requested information to the requestor.

Section 700.102 of title 40 of the Texas Administrative Code states that:

Information about a child protective services client is confidential and may not be released except as authorized by statute, federal regulation, court direction, attorney general's opinion, and the [department's] rules concerning disclosure of information and confidentiality of information in Chapter 734 of this title (relating to Public Information).

Section 700.102 directs us to consider other department rules concerning the disclosure of client information. Section 700.103 of title 40 of the Texas Administrative Code provides as follows:

A child protective services client may review all information in the client's case record except the identity of the complainant, *information exempted from disclosure under the Open Records Act*, and information exempted under other state laws.

40 T.A.C. § 700.103 (emphasis added). This rule permits a "client" to review that client's case record, with the exception of the complainant's identity and information excepted from disclosure under the Open Records Act and other state laws. *See also* 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions). The department's "CANRIS report" appears to list the requestor as a department client. However, even if the department considers the requestor a client under these circumstances, the regulation makes an exception to a client's right to review information in the client's case record for information "exempted from disclosure under the Open Records Act." We now proceed to consider whether the information is exempted from disclosure under the Open Records Act.

In this instance, you have provided this office with a letter from an assistant district attorney in Randall County. He requests that the department withhold the requested information because "this case is currently under criminal investigation by our office and the grand jury." Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We therefore conclude that section 552.108 of the Government Code excepts the requested records from required public disclosure. *See* Open Records Decision No. 474 (1987) (where incident involving allegedly criminal conduct is under active investigation, section 552.108 may be invoked by any proper custodian of information). The department may, therefore, withhold the requested information from disclosure.<sup>1</sup>

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 100665

Enclosures: Submitted documents

cc: Mr. Ronn Solis  
P.O. Box 81954  
Amarillo, Texas 79120  
(w/o documents)

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<sup>1</sup>We note that there may be a conflict between the provisions of section 261.201(f) and the department’s current regulations, as section 261.201(f) appears to be a parental access provision while the department’s regulations permit the department to withhold information from the parent. We are confident that this apparent conflict will soon be resolved by the department’s enactment of new regulations.

Because we are able to make a determination under section 552.101, we do not address your argument under section 552.103.